IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1087 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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TAKHATSINH FATESHSINH SODHA PARMAR - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR MR BP DALAL for the Appellant.
MR PRACHCHHAK, APP, for the respondent-State.

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE
and
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 26/07/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.L.DAVE)

1. This appeal arises out of a judgment and order rendered by learned Additional Sessions Judge, Nadiad, in Sessions Case No.282 of 1995, on 15th October, 1998, convicting the appellant for the offence of murder of Chotabhai Andarsinh Sodha Parmar on 7.4.1995, at Village Veena in Nadiad Taluka of Kheda District. The appellant came to be sentenced to undergo imprisonment for life and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for a further period of three months.

2. The prosecution case is that, while the deceased-Chhotabhai was sitting on Otta of the house of Ramanbhai Darji, on the day of the incident, the appellant came there with a Dharia and committed his murder by causing injuries to him. As per the prosecution case, the incident was witnessed by Laxmanbhai Ramanbhai Sodha Parmar, nephew of the deceased. He raised shouts and, therefore, Raijibhai Andarsinh, Jashubhai Ramsinhbhai

and Kabhaibhai Shanabhai came to the spot. Witness-Laxmanbhai informed Raijibhai about the incident. The deceased was taken in a tractor to Nadiad(Rural) Police Station. They were asked to go to Civil Hospital, Nadiad, and the deceased was taken to Civil Hospital. The doctor declared the deceased dead after examination. An F.I.R. was lodged by Raijibhai Andarsinh Sodha Parmar. On the basis of the F. I. R., offence was registered, investigated and charge sheet filed in the Court of learned Chief Judicial Magistrate, Nadiad, who, in turn, committed the case to the Court of Sessions and Sessions Case No.282 of 1995 came to be registered. Charge was framed against the accused-appellant at Exhibit 2, to which the he pleaded not guilty and came to be tried. After the evidence was over, the Trial Court recorded the statement of the accused under Section 313 of the Code of criminal Procedure and considering the evidence led before it, convicted the appellant for the offence of murder, as stated above.

3. The appeal is on our Board for final hearing since 12th June, 2006. Since the appeal is very old and the appellant is in prison for nearly ten years, we deem it proper to proceed with the

matter on merits by examining the merits ourselves.

4. The State is represented by learned Additional Public Prosecutor, Mr. Prachchhak. We may record that, he has assisted us in examining the case threadbare from all possible angles, which we appreciate.

5. On examining the evidence, we find that Dr. Suraj Ramswaroop Parsashar had performed the postmortem. In his deposition, he speaks of having noticed 7 external injuries and 3 internal injuries. All the 7 external injuries are of the nature of incise wounds of different sizes, but the description varies, as will be discussed in the paragraphs to follow. The doctor says that, injury No.1 was sufficient in ordinary course of nature to cause death. It has come in his evidence that the Inquest Panchnama (Exhibit 7) speaks only of 3 external injuries. He admits that he did not notice any hole injury (piercing injury) on cheek of the dead body. The doctor admits that the description of injuries in the Inquest Panchnama and the description of injuries in the postmortem notes are at variance, so also the number of injuries.

The doctor has admitted that, if injury is caused with a sharp edged heavy weapon, the edges would be contused. He admitted that external injuries No.1, 2 and 7 had contused edges, whereas edges of external injuries No.3 to 6 were of different nature and, therefore, it is quite possible that injuries No.1, 2 and 7 of the first set and injuries No.3 to 7 of the second set may have been caused by different weapons.

5.1 It would be appropriate to note, at this stage, that the Inquest Report (Exhibit 7) speaks of a hole on the right cheek, which injury is not noticed by the doctor while performing postmortem and how that happened has not been explained by the prosecution in any manner.

6. P.W. No.2-Raijibhai Andarsinh Sodha Parmar is examined at Exhibit 13. He is the first informant. He is not an eye-witness. He says that, on the day of the incident, at about 6.30 P.M., he was at his home when his grandson, Alpesh, came to call him and told him that somebody had injured 'Mota Bapu' (the deceased). He, therefore, went to the place of incident near the

house of Ramanbhai Darji and saw that the deceased was lying with his face down on the steps of the Otta. The witness says that he noticed injury on throat and neck of the deceased which was bleeding. He also says that Laxmanbhai was present. He informed the witness that when he (Laxman) was coming, Takhatsinh Fatesinh (the appellant) inflicted Dharia blow to the deceased and ran away. By that time, Kabhaibhai Shanabhai and Jashubhai Ramsinhbhai had also arrived. They took the deceased in a tractor to Civil Hospital, at Nadiad, where he was declared dead. According to this witness, the incident has roots in an incident which took place 30 years back, where the deceased was alleged to have raped and murdered the appellant's cousin-Shantaben and the deceased came to be acquitted after trial. The witness has been cross-examined and, during cross-examination, he admits that when he reached the place of incident, Hiraben, wife of Rameshbhai Somabhai, Kantaben, daughter of the deceased, neighbour-Sarojben Panchal, Kabhaibhai Shanabhai, Jashubhai Ramsinh and Ganpatsinh were present. He says that that he did not ask anything to Kantaben. He admits that Kantaben told him that, on hearing the hubbub, she came to the place of incident. He,

however, denies the suggestion that Kantaben also told him that after she arrived at the place of incident, Laxmanbhai Rameshbhai and Ganpatsinh came to the spot. The witness says that, on reaching the hospital, the deceased was declared dead by the doctor after examination. The doctor had told that he would inform the police and called the policeman posted at the hospital. The policeman at the hospital made entry in the register and noted down his name, etc. He says that he informed the police about the incident on the basis of the what was told to him by Alpesh. At that time, Laxmanbhai was present . His F. I.R. was recorded at the Civil Hospital itself.

6. P.W. 3-Laxman Ramesh Sodha Parmar is examined at Ex.15. He is the only eye-witness examined by the prosecution. He says that, on the date of incident, he had gone to Nadiad and returned to village Veena around 6.30 in the evening by bus. He stays at Bhatijiwala Falia in village Veena. He says that he noticed his uncle-Chhotabhai sitting on Otta of Ramanbhai Darji. He says that, at that time, he saw accused-Takhatsinh coming from east with a Dharia in his hand. He gave a Dharia blow on neck of the

Chhotabhai and, as a result, Chhotabhai fell down. The witness, therefore, raised shouts. Hearing his shouts, Raijibhai Andarsinh, Jashubhai Ramsinhbhai, Kabhaibhai Shanabhai, etc. came to the spot. The witness says that he told Raijibhai about the incident and then he went to bring the tractor of Arvindbhai. They placed Chhotabhai on the tractor and went to Nadiad (Rural) Police Station. They were told to go to Civil Hospital and, therefore, they took the deceased to Civil Hospital, where the doctor declared him dead. He says that he had shown the place of incident to the police at about 9.00 P.M. on the day. He also says that the accused ran away immediately after causing the injury with Dharia. He identified the accused as the assailant.

7. From the above depositions and postmortem notes, it is clear that the deceased had as many as seven incise wounds on vital parts of the body, like neck, head, face, etc. It is also clear from evidence of the doctor and judicial notice can be taken of the fact that these seven injuries could not have been caused by one blow. Differently put, more than one blow must have been inflicted on the deceased.

7.1 It also emerges from evidence of the doctor that the injuries can be divided into two sets looking to their nature and it is possible that the two sets of injuries were caused by two different weapons.

7.2 It also emerges from medical evidence that the doctor did not notice any injury on cheek of the dead body and that there was variance in nature of injuries noticed and recorded while preparing the Inquest Panchnama and while preparing the postmortem notes. There is also a variance in number of injuries noted in the Inquest Report and the postmortem notes.

8. Against the above medical evidence, if we see the evidence of Laxmanbhai Ramanbhai Sodha Parmar (Exhibit 15), who claims to be an eye-witness to the incident, he accounts for only one blow inflicted on the deceased by the appellant. It is not that the incident had started and the witness reached the spot late and may have noticed the last blow only because the witness, in terms, says that he saw Takhatsinh coming to the place from

eastern side with a Dharia in his hand and he inflicted a Dharia blow on neck of Chhotabhai, and, as a result, Chhotabhai fell down. The witness raised shouts and, resultantly, Raijibhai Andarsinh, Jashubhai Ramsinhbhai, Kabhaibhai Shanabhai, etc. arrived. The witness also states that, after causing the injury, the appellant immediately ran away.

8.1 The discrepancy in number of blows has remained unexplained by the prosecution. The prosecution has not examined any other witness claiming to have witnessed the incident. The prosecution has not given any account for the rest of the injuries.

8.2 The case of the prosecution, thus, depends mainly on deposition of Laxmanbhai Ramanbhai Sodha Parmar (Exhibit 15). He is the nephew of the deceased and, before accepting his solitary evidence as eye-witness, it is prudent to look for some corroboration or to test the veracity of the witness in light of other evidence or contemporaneous material brought on record. In the instant case, the evidence of Laxmanbhai would call for a closer scrutiny because he accounts for only one blow, whereas the

deceased had as many as seven injuries, which were not possible by a single blow. The matter does not end there. The evidence of the doctor makes it clear that the injuries can be divided into two sets having two different types of injuries possible with two different weapons. That would indicate that there is a possibility that there were two assailants or at least two weapons were used. If that is so, the possibility of witness-Laxman not telling the truth before the Court or he having not witnessed the incident cannot be ruled out.

8.3 The above view gets supported by other depositions.

8.3.1 According to Laxman, on his raising shouts, Raijibhai Andarsinh, Jashubhai Ramsinhbhai, Kabhaibhai Shanabhai, etc. came to the spot. In this context, if deposition of Raijibhai Andarsinh is seen, he says that, on being informed by Alpesh, he went to the spot. He also says that, when he reached the place of incident, Hiraben, wife of Ramanbhai Somabbai, Kantaben, Sarojben Panchal, Kabhaibhai Shanabbai, Jashubhai Ramsinhbhai and Ganpatbhai were present. Laxman is totally silent about the arrival and presence of Hiraben, Kantaben and Sarojben. Raijibhai

also admits that Kantaben told him that, on hearing the shouts, she had come to to the place of incident. We have examined the possibility of Laxman having not spoken about the arrival and presence of Hiraben, Kantaben and Sarojben out of a bona fide mistake. But we find that the chances are too remote for such a bona fide mistake. This is because it transpires from deposition of the Investigating Officer-Yashwantsinh Ramsinh Jhala (Exhibit 27)that he had recorded statement of Hiraben, wife of Rameshbhai Somabhai, on Otta of whose house the incident had occurred. He also admits that he had recorded statement of Sarojben Panchal, whose house is located just opposite the place of incident. The Investigating Officer admits that he had recorded the statement of Kantaben. He, however, denies the suggestion that from Kantaben's statement, it was revealed that Laxmanbhai arrived at the place of incident after the hubbub and after Kantaben reached the place of incident. It appears that these lady witnesses were cited as witnesses in the charge sheet, meaning thereby that they, in their statements before police, support the prosecution case. But for the reasons best known to the prosecution, they have not been examined. It is, therefore, possible that on hearing the shouts, the

lady witnesses reached the place of incident first and, thereafter , Laxman arrived at the spot. This is because Kantaben stays in the very house where the incident occurred and Sarojben stays in a house just opposite to the place of incident. By that time, the assailant may have left the place of incident. Differently put, Laxman may not have witnessed the incident and, therefore, in our view, only to make his position sound, Laxman has conveniently not referred to presence of these three lady witnesses, who had reached the place of incident before him. These three lady witnesses are not examined and, therefore, it has not come on record as to what is their version. But from cross-examination of the Investigating officer, it appears to be quite possible that they reached the place of incident prior to Laxmanbhai reaching the spot.

8.4 The information that is received by the first informant is through Alpesh. Statement of Alpesh is not recorded by the Investigating officer nor is he cited as a witness. The information which is given by Raijibhai to the doctor and to the policeman on duty at the Civil Hospital is that somebody has assaulted the

deceased with a Dharia. It has come in evidence that at that time, witness-Laxman was present. If that be so, he would have definitely intervened and clarified the situation as to how the incident occurred and who caused the injury.

9. All the above factors lead us to conclude that possibility of Laxman having not witnessed the incident cannot be ruled out. It also cannot be ruled out that Laxman, even if has seen the incident, is not giving correct account as to genesis and sequence of the incident. He appears to be deliberately suppressing the presence of lady witnesses, who appear to have reached the place of incident prior to him and naturally so, because they stay in the vicinity of the place of incident. Against that, Laxman is a chance witness, who was only passing by the place. In our opinion, therefore, it is unsafe to confirm the conviction recorded by the Trial Court on testimony of this sole eye-witness and the appeal deserves to be allowed.

10. In the result, the appeal is allowed. The judgment and order of conviction and sentence of the Trial Court is hereby set

aside. The appellant is acquitted of all the charges framed against him. The appellant is ordered to be set at liberty forthwith, if not required in any other case. Fine, if paid, shall be refunded to the appellant.

[A. L. DAVE, J.]

[BANKIM N. MEHTA, J.]

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